



## 40 CFR Part 52

[EPA-R03-OAR-2020-0554; FRL-10021-57-Region 3]

### Approval and Promulgation of Air Quality Implementation Plans;

### Delaware; Emissions Statement Certification for the 2015 Ozone National Ambient Air Quality Standard

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision formally submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC). Under the Clean Air Act (CAA), a state's SIP must include an emission statement regulation that requires stationary sources in ozone nonattainment areas classified as marginal or above to report annual emissions of nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOC). This SIP revision provides Delaware's certification that its existing emissions statement program satisfies the emissions statement requirements of the CAA for the 2015 ozone national ambient air quality standard (NAAQS). EPA is proposing to approve Delaware's emissions statement program certification for the 2015 ozone NAAQS as a SIP revision in accordance with the requirements of the CAA.

**DATES:** Written comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R03-OAR-2020-0554 at <https://www.regulations.gov>, or via email to [Gordon.Mike@epa.gov](mailto:Gordon.Mike@epa.gov). For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or

other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **For Further Information Contact** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Serena Nichols, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2053. Ms. Nichols can also be reached via electronic mail at [Nichols.Serena@epa.gov](mailto:Nichols.Serena@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

Under the CAA, EPA establishes NAAQS for criteria pollutants in order to protect human health and the environment. In response to scientific evidence linking ozone exposure to adverse health effects, EPA promulgated the first ozone NAAQS, the 0.12 part per million (ppm) 1-hour ozone NAAQS, in 1979. See 44 FR 8202 (February 8, 1979). The CAA requires EPA to review and reevaluate the NAAQS every five years in order to consider updated information regarding the effects of the criteria pollutants on human health and the environment. On July 18, 1997, EPA promulgated a revised ozone NAAQS, referred to as the 1997 ozone NAAQS, of 0.08 ppm averaged over eight hours. 62 FR 38856. This 8-hour ozone NAAQS was determined to be more protective of public health than the previous 1979 1-hour ozone NAAQS. In 2008, EPA strengthened the 8-hour ozone NAAQS from 0.08 to 0.075 ppm. See 73 FR 16436 (March 27, 2008). In 2015, EPA further lowered the 8-hour ozone NAAQS from 0.075 ppm to 0.070

ppm. The 0.070 ppm standard is referred to as the 2015 ozone NAAQS. See 80 FR 65452 (October 26, 2015).

On June 4, 2018 and July 25, 2018, EPA designated nonattainment areas for the 2015 ozone NAAQS. 83 FR 25776 and 83 FR 35136. Effective August 3, 2018 (83 FR 25776, June 4, 2018), New Castle County, Delaware, was designated as marginal nonattainment for the 2015 ozone NAAQS. New Castle County was designated as part of the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE 2015 ozone NAAQS nonattainment area, which includes the following counties: New Castle in Delaware; Cecil in Maryland; Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Ocean, and Salem in New Jersey; and Bucks, Chester, Delaware, Montgomery, and Philadelphia in Pennsylvania. See 40 CFR 81.308, 81.321, 81.331, and 81.339. Delaware's Kent and Sussex Counties were designated as attainment areas for the same 2015 Ozone NAAQS. See 40 CFR 81.308.

Section 182 of the CAA identifies plan submissions and requirements for ozone nonattainment areas. Specifically, CAA section 182(a)(3)(B) requires that states develop and submit, as a revision to their SIP, rules which establish annual emission reporting requirements for certain stationary sources. Sources that are within ozone nonattainment areas must annually report the actual emissions of NO<sub>x</sub> and VOC to the state. However, states may waive this requirement for sources that emit under 25 tons per year (tpy) of NO<sub>x</sub> or VOC if the state provides an inventory of emissions from such class or category of sources as required by CAA sections 172 and 182. See CAA section 182(a)(3)(B)(ii).

EPA published guidance on source emissions statements in a July 1992 memorandum titled, "Guidance on the Implementation of an Emission Statement Program"<sup>1</sup> and in a March 14, 2006 memorandum titled, "Emission Statement Requirements Under 8-hour Ozone NAAQS

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<sup>1</sup> July 1992 memorandum titled, "Guidance on the Implementation of an Emission Statement Program" is available online at [https://www.epa.gov/sites/production/files/2015-09/documents/emission\\_statement\\_program\\_zypdf.pdf](https://www.epa.gov/sites/production/files/2015-09/documents/emission_statement_program_zypdf.pdf) Docket ID: EPA-R03-QAR-2020-0554.

Implementation” (2006 memorandum).<sup>2</sup> In addition, on December 6, 2018, EPA issued a final rule addressing a range of nonattainment area SIP requirements for the 2015 ozone NAAQS, including the emission statement requirements of CAA section 182(a)(3)(B) (2018 final rule). 83 FR 62998, codified at 40 CFR part 51, subpart CC. The 2006 memorandum clarified that the emissions statement requirement of CAA section 182(a)(3)(B) was applicable to all areas designated nonattainment for the 1997 ozone NAAQS and classified as marginal or above under subpart 2, part D, title I of the CAA. Per EPA’s 2018 final rule, the emissions statement requirement also applies to all areas designated nonattainment for the 2015 ozone NAAQS. 83 FR 62998, 63023 (December 6, 2018).

According to the preamble to EPA’s 2018 final rule, most areas that are required to have an emissions statement program for the 2015 ozone NAAQS already have one in place due to a nonattainment designation for an earlier ozone NAAQS. 83 FR 62998, 63001 (December 6, 2018). EPA’s 2018 final rule states that, “Many air agencies already have regulations in place to address certain nonattainment area planning requirements due to nonattainment designations for a prior ozone NAAQS. Air agencies should review any existing regulation that was previously approved by the EPA to determine whether it is sufficient to fulfill obligations triggered by the revised ozone NAAQS.” *Id.* In cases where an existing emissions statement rule is still adequate to meet the emissions statement requirement under the 2015 ozone NAAQS, states may provide the rationale for that determination to EPA in a written statement for approval into the SIP to meet the requirements of CAA section 182(a)(3)(B). 83 FR 62998, 63002 (December 6, 2018). In this statement, states should identify how the emissions statement requirements of CAA section 182(a)(3)(B) are met by their existing emissions statement rule. *Id.* In summary, Delaware can submit, as a formal revision to its SIP, a statement certifying that the State’s existing emissions statement program satisfies the requirements of CAA section 182(a)(3)(B)

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<sup>2</sup> March 14, 2006 memorandum titled, “Emission Statement Requirements Under 8-hour Ozone NAAQS Implementation” is available online at [https://www.epa.gov/sites/production/files/2015-07/documents/8hourozone\\_031406.pdf](https://www.epa.gov/sites/production/files/2015-07/documents/8hourozone_031406.pdf), Docket ID: EPA-R03-OAR-2020-0554.

and covers the State’s portion of the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE nonattainment area for the 2015 ozone NAAQS.

## II. Summary of SIP Revision and EPA Analysis

On August 3, 2020, Delaware, through DNREC, submitted as a formal SIP revision, a statement certifying that Delaware’s existing SIP-approved emissions statement program satisfies the emissions statements requirements for the 2015 ozone NAAQS and is at least as stringent as the requirements of CAA section 182(a)(3)(B). The provisions that implement Delaware’s emissions statements program are under 7 DE Administrative Code 1117 Section 7.0 Emission Statement and were approved by EPA into the Delaware SIP on April 29, 1996 (61 FR 7415, February 28, 1996). See 40 CFR 52.420(c). Table 1 summarizes Delaware’s emissions statements provisions and the corresponding CAA section 182(a)(3)(B) requirements.

**Table 1. Delaware Emissions Statements Provisions and CAA Section 182(a)(3)(B) Requirements**

<b>CAA Section 182(a)(3)(B)<sup>3</sup> Requirement</b>	<b>7 DE Administrative Code 1117 Section 7.0 Requirement</b>
182(a)(3)(B)(i) – For marginal nonattainment areas, the State shall submit a SIP revision to require that the owner or operator of each stationary source of NO <sub>x</sub> or VOC provide the State with a statement for classes or categories of sources showing the actual emissions of NO <sub>x</sub> and VOC from that source.	7 DE Admin Code 1117 Section 7.1 – Emissions statements requirements apply to all stationary sources located in an ozone nonattainment area that emit NO <sub>x</sub> or VOC. This would include marginal and above non-attainment areas.  7 DE Admin Code 1117 Section 7.2 – Emissions statements are required to include the following information: source identification information, operating data, actual emissions data, control equipment information, and process rate information.
182(a)(3)(B)(i) – Emissions statements are required to be submitted annually.	7 DE Admin Code 1117 Section 7.3 – subject sources must submit to DNREC their annual emissions statements by April 30 for the

<sup>3</sup> Section 182 of the CAA sets out a graduated control program for ozone nonattainment areas. Section 182(a) sets out requirements applicable in marginal ozone nonattainment areas, which are also applicable by sections 182 (b), (c), (d), and (e) to all other ozone nonattainment areas. See 2015 memorandum titled “Emission Statement Requirement Under 8-hour Ozone NAAQS Implementation,” available online at [https://www.epa.gov/sites/production/files/2015-07/documents/8hourozone\\_naaqs\\_031406.pdf](https://www.epa.gov/sites/production/files/2015-07/documents/8hourozone_naaqs_031406.pdf), Docket ID: EPA-R03-OAR-2020-0554.

	preceding calendar year. DNREC may require more frequent emissions statements if required by EPA or if more frequent analysis of data is necessary to implement the requirements of Title 7, Chapter 60. Environmental Control of the Delaware Code (7 Del.C. Chapter 60).
182(a)(3)(B)(i) – Emissions statements shall contain a certification that the information contained in the statement is accurate to the best knowledge of the individual certifying the statement.	7 DE Admin Code 1117 Section 7.2 – Each emissions statement shall include a certification of the data to ensure that the information contained in the statement is accurate to the best knowledge of the individual certifying the statement, who shall be an official of the facility and will take legal responsibility for the emissions statement’s accuracy.
182(a)(3)(B)(ii) – The State may waive the requirements for emissions statements for any class or category of stationary sources which emit less than 25 tpy of NO <sub>x</sub> or VOC if the State provides an inventory of emissions from such class or category of sources as required by CAA section 172 and 182.	7 DE Admin Code 1117 Section 7.1 – DNREC may, with EPA approval, waive the emissions statements requirements for classes or categories of stationary sources with facility-wide actual emissions of less than 25 tpy of NO <sub>x</sub> or VOCs if the class or category is included in the base year and periodic ozone SIP emission inventories.

EPA’s review of Delaware’s submittal finds Delaware’s existing, SIP-approved emissions statement provisions under 7 DE Administrative Code 1117 Section 7.0 satisfy the emission statement requirements of CAA section 182(a)(3)(B) for stationary sources located in marginal or above nonattainment areas in Delaware, including such sources in New Castle County, for the 2015 ozone NAAQS. Pursuant to CAA section 182(a)(3)(B)(i), Delaware must require annual emissions statements from stationary sources of NO<sub>x</sub> or VOC located in marginal nonattainment areas. These emissions statements must be certified by an official of the facility. As shown in Table 1, 7 DE Administrative Code 1117 Section 7.1 requires that all stationary sources of NO<sub>x</sub> and VOC located in an ozone nonattainment area submit emissions statements to DNREC, except for those with actual emissions of less than 25 tpy of NO<sub>x</sub> or VOC as permitted by CAA section 182(a)(3)(B). EPA finds Section 7.1 satisfies the requirements of CAA section 182(a)(3)(B)(i) as it requires that stationary sources located in ozone nonattainment areas in the State, including Delaware’s marginal nonattainment areas for the 2008 ozone NAAQS, submit emission statements. In addition, 7 DE Administrative Code 1117 Section 7.2 requires emissions

statements be certified by and official of the facility and Section 7.3 requires emissions statements be submitted annually on April 30. EPA proposes to determine that these provisions satisfy the requirements of CAA section 182(a)(3)(B)(i) for the 2015 ozone NAQSS as they require emissions statements be certified and submitted annually.

EPA also proposes to determine that Delaware's emissions thresholds for stationary sources that are required to submit an emissions statement meet the threshold requirements of CAA section 182(a)(3)(B)(ii). As discussed previously, pursuant to CAA section 182(a)(3)(B)(ii), states may waive emissions statements requirements for classes or categories of stationary sources that emit less than 25 tpy of NO<sub>x</sub> or VOC if the state provides an inventory of emissions from such classes or categories of sources as required by CAA section 172 and 182. As shown in Table 1, 7 DE Administrative Code 1117 Section 7.1 waives, with EPA approval, the requirement for emissions statements for classes or categories of stationary sources with facility-wide actual emissions of less than 25 tpy of NO<sub>x</sub> or VOC if the class or category is included in the base year and periodic ozone emission inventories. Delaware does provide emissions inventories that include stationary sources in nonattainment areas that emit less than 25 tpy of NO<sub>x</sub> or VOC, as required by CAA sections 172(c)(3) and 182(b)(3)(B)(ii). Therefore, EPA finds the emissions thresholds of 7 DE Administrative Code 1117 Section 7.1 are consistent with CAA section 182(a)(3)(B)(ii).

EPA has determined that the SIP-approved provisions under 7 DE Administrative Code 1117 Section 7.0 satisfy the requirements of CAA section 182(a)(3)(B) for the 2015 ozone NAAQS. Therefore, EPA is proposing to approve, as a SIP revision, the State of Delaware's, August 3, 2020 emissions statements certification for the 2015 ozone NAAQS as approvable under CAA section 182(a)(3)(B).

### **III. Proposed Action**

EPA is proposing to approve, as a SIP revision, the State of Delaware's August 3, 2020 emissions statements certification for the 2015 ozone NAAQS as approvable under CAA section

182(a)(3)(B). Delaware's emissions statements certification certifies that Delaware's existing SIP-approved emissions statements program under 7 DE Administrative Code 1117 Section 7.0 satisfies the requirements of CAA section 182(a)(3)(B) for the 2015 ozone NAAQS. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

#### **IV. Statutory and Executive Order Reviews**

Under the CAA, the EPA Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because it is not a significant regulatory action under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);



- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rulemaking, in which EPA is proposing approval of Delaware's certification that its existing emission statement program satisfies the emission statement requirements of the CAA for the 2015 ozone NAAQS, does not have tribal implications as

specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 et seq.

Dated: March 24, 2021

Diana Esher,  
Acting Regional Administrator,  
Region III.

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